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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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40158	7590	03/15/2005	EXAMINER	
LEONARD & PROEHL, PROF. L.L.C. 3500 SOUTH FIRST AVENUE CIRCLE SUITE 250 SIOUX FALLS, SD 57105			HWANG, VICTOR KENNY	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 03/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/991,041

Applicant(s)

CHRISHON, MARCELLUS D.

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8,9 and 11-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8,9 and 11-19 is/are rejected.
- 7) ☒ Claim(s) 1 and 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION***Claim Objections***

1. Claims 1 and 9 are objected to because of the following informalities:

in claim 1, on line 12, "leas" presumably should be changed to --least--; and

in claim 9, presumably the claim should depend from claim 8 to provide proper antecedent basis for the recitation "said cinch straps" on line 2. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1, 2, 8 and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Jackson, Jr.* (US Pat. 3,759,510) in view of *Franco-Sion* (US Pat. 6,557,176 B2).

Jackson, Jr. discloses an exercise system comprising a plurality of body members 4, 6, 8, 10, 12, 14, 16, 18 and 20. Each body member is constructed to be snugly fit around a body portion of a user. A plurality of pockets 70 are coupled to each body member, the front of each pocket having a closure member 74 for closing a respective pocket and retaining a plurality of weight members selectively insertable into each of the pockets such that the weight resistance against muscles of the user can be selectively changed. The weight material is

flexible and conforms to the shape of the user's body portion. The body members may be worn separately (col. 1, lines 20-23 and col. 4, lines 1-3).

At least one of the body members 8 tapers inwardly from a trailing edge to a leading edge such that the body member is adapted for fitting a forearm of the user. Note in Fig. 1 that the trailing edge of the forearm body member 8 adjacent the elbow of the user is wider than the leading edge of the forearm body member 8 adjacent the wrist of the user, and note how the inside edge of the forearm body member 8 tapers relative to the edges of the weight pockets 70 (another indication of an inward taper). The forearm body member 8 includes a plurality of pockets 70 coupled thereto, a first of the pockets (the lower weight pockets) located proximate the leading edge (adjacent the wrist) of the forearm body member 8, and a second of the pockets (upper weight pockets) located proximate the trailing edge (adjacent the elbow) of the forearm body member 8. The forearm body member 8 may have pockets around the entire circumference thereof (thereby having pockets positioned on an opposite side of the forearm from the first of the pockets). A pair of cinch straps 44,46 are coupled to the forearm body member 8. A first of the cinch straps 44 is positioned proximate the trailing edge and a second of the cinch straps is positioned proximate the leading edge.

At least one of the body members 16 inwardly tapers from an upper edge (adjacent the crotch and hips) to a lower edge (adjacent the knees) such that the body member 16 is adapted to fit the thigh of the user. Note how the upper edge of the thigh body member 16 is wider than the lower edge of the thigh body member, and how the inside edge of the thigh body member 16 tapers relative to the edges of the weight pockets 70 (indications of an inward taper).

At least one of the body members 18 is adapted for securing above the ankle of a user. The ankle body member 18 is tubular to support weights above the ankle of the user.

At least one of the body members 20 is adapted for inserting a foot of the user to position the body member over the ankle of the user. Weight pockets are positioned above the ankle.

At least one of the body members 6 has a pair of arm openings, a head opening and a torso opening such that the body member 6 is adapted to receive the torso of the user. The torso body member comprises a back panel for covering the back of the user and a front panel for covering the front of the user. Weight pockets are located on the front panel and the back panel (col. 3, lines 34-36). The front panel shown in Fig. 1 has weight pockets 70 (upper set of weight pockets) located between the arm openings and weight pockets (lower set of weight pockets) below arm openings. The weight pockets on the back panel would be positioned similarly to the front weight pockets. Note that the pair of arm openings can be considered to be the portion of the torso body member that transitions to the stretch inserts 22 on either side of the chest and back portion of the torso body member.

Jackson, Jr. does not disclose each of the weight pockets having a flap for securing to a front panel of each pocket (claim 1).

Franco-Sion discloses body member for snugly fitting around a portion of a user. A plurality of pockets are coupled to the body member, each pocket having a flap for securing to a front panel of each pocket such that the flap is for closing each of the respective pockets. Means other than flaps can be used to close the pockets. A zipper can be provided across the

openable end of the pocket or compartments. In addition, any number of individual flaps may be provided, such as one flap for each compartment (col. 7, lines 5-9).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the weight pockets of *Jackson, Jr.* with flaps, since *Franco-Sion* teaches the equivalence of the use of flaps and zippers for closing the open ends of weight pockets in order to permit the selective insertion of weights into the weight pockets and to hold the weights securely.

4. Claims 3, 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Jackson, Jr.* (US Pat. 3,759,510) in view of *Franco-Sion* (US Pat. 6,557,176 B2) as applied to claims 1 and 2 above, and further in view of *Spletzer* (US Pat. 6,039,677). *Jackson, Jr.* as modified by *Franco-Sion* discloses the invention as claimed except for a pair of support straps coupled to the thigh body member such that each strap is releasably coupled to itself for adjustably securing the thigh body member to the thigh of the user, a first of the support straps positioned proximate the upper edge of the thigh member and a second of the support straps positioned proximate the lower edge of the thigh member (claim 3); and each support strap having a buckle coupled to an end for receiving the strap for cinching back the strap to itself (claims 4 and 9).

Jackson, Jr. discloses pairs of support straps 44,46 and 66,68 on the body members 8 and 18 for securing the respective body members to the body of the user. The support straps 44,46 are positioned proximate the trailing and leading edges of the body member, and the support straps 66,68 are positioned proximate the upper and lower edges of the body member

18. Each support strap is releasably coupled to itself for adjustable securement of the body member. The support straps are useful for securing the body members to the user's body when the body members are used individually. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the thigh body member of *Jackson, Jr.* as modified by *Franco-Sion* with upper and lower support straps, since *Jackson, Jr.* discloses that pairs of support straps are useful for securing a body member to the user's body when the body members are used individually (col. 3, line 56 to col. 4, line 31) and it would be useful to use the thigh body member without the shorts 14 and above the ankle body member 18.

Spletzer discloses support straps for a weighted thigh body member, wherein the support straps include a buckle for cinching back the support strap to itself to insure secure engagement of the thigh body member to the user's thigh. This form of strap is well known in the exercise art for securing things to a user's body permitting adjustment for different user's body dimensions.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the body members of *Jackson, Jr.* as modified by *Franco-Sion* with pairs of support straps with cinching buckles, since *Jackson, Jr.* discloses support straps are useful for securing a body member to the user's body when the body members are used individually and *Spletzer* discloses the well known use of buckles to permit the cinching of a support strap to insure the secure engagement of a weighted body member to the user's body.

5. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Jackson, Jr.* (US Pat. 3,759,510) in view of *Franco-Sion* (US Pat. 6,557,176 B2) as applied to claim 1 above, and further in view of *Conrad Da'oud et al.* (US Pat. 5,144,694). *Jackson, Jr.* as modified by *Franco-Sion* discloses the invention as claimed except for the ankle body member 18 having first and second ends, the first end having a first fastener comprising a first portion of hook and loop fastener and the second end having a second fastener comprising a second portion of hook and loop fastener for releasably securing the first end to the second end of the ankle body member.

Conrad Da'oud discloses a plurality of body members adapted to fit snugly around portions of a user's body. A plurality of weight pockets are coupled to the body members. The ankle and wrist body members 20 may be formed in a loop through which the user's wrist or ankle extends, or alternatively, each wrist and ankle band may be formed as an elongated strip having fastening means (such as hook and loop fastening material) for fastening the strip into a loop configuration (col. 5, line 67 to col. 6, line 10).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the ankle body member of *Jackson, Jr.* as modified by *Franco-Sion* as having first and second ends comprising complementary hook and loop fasteners to secure the ends into a loop, since *Conrad Da'oud et al.* teaches that weighted ankle body members can be constructed as a loop or as a strip with ends connected to form a loop and because such a construction would provide for easier application of the body member to the user's body.

6. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Jackson, Jr.* (US Pat. 3,759,510) in view of *Franco-Sion* (US Pat. 6,557,176 B2) as applied to claim 1 above, and further in view of *Biggs* (US Pat. 3,306,610). *Jackson, Jr.* as modified by *Franco-Sion* discloses the invention as claimed except for at least one body member having a leg opening, a heel opening and a toe opening such that the body member is adapted for inserting a foot of the user to position the body member over an ankle of the user (claim 11). Note that the at least one pocket recited in claim 12 does not have to be located on the associated body member adapted for inserting a foot of the user.

Biggs discloses a weighted ankle body member 11 comprising a leg opening, a heel opening and a toe opening such that the body member is adapted for inserting a foot of the user to position the body member over the ankle of a user. A plurality of pockets 61 are coupled to the body member and include flaps 25 for securing a plurality of weights therein above the ankle of a user. The ankle body member 11 is adapted to fit over the shoe of an athlete in training. It is well known that athletes in training wear athletic shoes designed for their particular sport.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the exercise system of *Jackson, Jr.* as modified by *Franco-Sion* with the weighted ankle body member of *Biggs*, in order to provide a weighted ankle member useable with the user's athletic shoes, rather than the weighted shoes provided by *Jackson, Jr.* so that an athlete can use the weights with athletic shoes designed for the sport in which an athlete participates.

7. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Jackson, Jr.* (US Pat. 3,759,510) in view of *Franco-Sion* (US Pat. 6,557,176 B2), *Spletzer* (US Pat. 6,039,677), *Conrad Da'oud et al.* (US Pat. 5,144,694) and *Biggs* (US Pat. 3,306,610). *Jackson, Jr.*, *Franco-Sion*, *Spletzer*, *Conrad Da'oud et al.* and *Biggs* have been discussed above, and such discussion is incorporated herein. *Jackson, Jr.* discloses the invention as claimed except for each of the weight pockets having a flap for securing to a front panel of each pocket; a pair of support straps coupled to the thigh body member such that each strap is releasably coupled to itself for adjustably securing the thigh body member to the thigh of the user, a first of the support straps positioned proximate the upper edge of the thigh member and a second of the support straps positioned proximate the lower edge of the thigh member, and each support strap having a buckle coupled to an end for receiving the strap for cinching back the strap to itself; the ankle body member 18 having first and second ends, the first end having a first fastener comprising a first portion of hook and loop fastener and the second end having a second fastener comprising a second portion of hook and loop fastener for releasably securing the first end to the second end of the ankle body member; and at least one body member having a leg opening, a heel opening and a toe opening such that the body member is adapted for inserting a foot of the user to position the body member over an ankle of the user.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the weight pockets of *Jackson, Jr.* with flaps, since *Franco-Sion* teaches the equivalence of the use of flaps and zippers for closing the open ends of weight pockets in order to permit the selective insertion of weights into the weight pockets and to hold the weights securely.

It would have also been obvious to one having ordinary skill in the art at the time the invention was made to provide the body members of *Jackson, Jr.* with pairs of support straps with cinching buckles, since *Jackson, Jr.* discloses support straps are useful for securing a body member to the user's body when the body members are used individually and *Spletzer* discloses the well known use of buckles to permit the cinching of a support strap to insure the secure engagement of a weighted body member to the user's body.

It would have been further obvious to one having ordinary skill in the art at the time the invention was made to provide the ankle body member of *Jackson, Jr.* as having first and second ends comprising complementary hook and loop fasteners to secure the ends into a loop, since *Conrad Da'oud et al.* teaches that weighted ankle body members can be constructed as a loop or as a strip with ends connected to form a loop so that it is easier for the user to apply the ankle body member to the ankle.

It would also have been further obvious to one having ordinary skill in the art at the time the invention was made to provide the exercise system of *Jackson, Jr.* with the weighted ankle body member of *Biggs*, in order to provide a weighted ankle member useable with the user's athletic shoes, rather than the weighted shoes provided by *Jackson, Jr.* so that an athlete can use the weights with athletic shoes designed for the sport in which an athlete participates.

Response to Arguments

8. Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection. Applicant argues each of the prior art rejections under 35 USC 102 and 103 found in the Office action mailed Oct. 14, 2004 with the argument that

the respective references do not disclose, teach or suggest “said plurality of pockets comprises a pair of pockets being coupled to the associated one of said body members. a first of said pockets being coupled proximate a leading edge of the associated one of said body members, a second of said pockets being coupled to the associated one of said body members proximate said trailing edge of the associated one of said body members such that said second of said pockets is adapted for being positioned on an opposite side of the forearm of the user from said first of said pockets, said pockets being adapted for spreading the weight of the user.” The rejections under 35 USC 102 and 103 have been withdrawn.

In response to Applicant’s argument that *Jackson, Jr.* fails to teach at least one of the body members fitting on the forearm of the user having a first of one of the pockets positioned proximate the leading edge of the body member and a second of the pockets being positioned proximate the trailing edge of the body member with the first of the pockets being positioned on an opposite side of the forearm from the second of the pockets, and that there is no motivation to modify *Jackson, Jr.* to meet the requirements of the claim, *Jackson, Jr.* discloses each of these features. As shown in Fig. 1, each of the forearm body members 8 has a leading edge 48 and a trailing edge 42 with the body member tapering from the trailing edge to the leading edge and upper and lower cinch straps 44,46 releasably coupled to itself. There is an upper pocket 70 positioned proximate the trailing edge and there is a lower pocket 70 positioned proximate the leading edge. *Jackson, Jr.* teaches that the forearm body member 8 may have pockets around the entire circumference thereof (col. 3, lines 42-43). This would mean that there are pockets located on the backside of the forearm body members of what is shown in drawing Fig. 1 in order for there to be pockets around the entire circumference.

With pockets on the backside of the forearm body member, the requirements of the claim argued are met.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation is found in the primary reference *Jackson, Jr.* and/or each of the secondary references now applied in the new rejections above.

In response to applicant's argument that the examiner has combined an excessive number of references, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991).

Franco-Sion, as now applied, teaches the equivalence of flaps and zippers for closing weight pockets to retain weight material within the pockets (col. 7, lines 5-9). This would provide motivation to modify the zippered closures of the weight pockets of *Jackson, Jr.*

Spletzer discloses support straps and cinch buckles for retaining weighted body members to a user's body. This, in combination with the teaching by *Jackson, Jr.*, that pairs of support straps are useful for securing a body member to the user's body when the body members are used individually (col. 3, line 56 to col. 4, line 31) provides the required motivation to provide the thigh body member of *Jackson, Jr.* with support straps and that a

support strap and buckle is disclosed by *Spletzer* for the same purpose, to secure a weighted thigh body member to the user's thighs.

Conrad Da'oud et al. discloses the equivalence between a weighted ankle body member constructed as a loop and one constructed as a strip with the ends of the strip releasably fastened to one another (col. 5, line 67 to col. 6, line 10). This equivalent construction provides the motivation to modify the closed loop construction of *Jackson, Jr.* along with being able to apply the releasably fastened ankle body member to the user's ankle.

Biggs discloses a weighted body member as a spat to be worn over the shoes of an athlete, therefore permitting the athlete to use athletic shoes. The use of athletic shoes would permit an athlete to train more closely to the environment (sport) in which athlete participates. *Jackson, Jr.* discloses a weighted shoe for use with the exercise system. It would have been obvious to one having ordinary skill in the art to use the spat of *Biggs* in place of the weighted shoe of *Jackson, Jr.* so that the sort specific athletic shoe of the user can be used to better simulate the specific sporting environment.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until

after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence at this time is (703) 872-9306.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Victor K. Hwang
March 10, 2005

JEROME W. DONNELLY
PRIMARY EXAMINER

